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SUBJECT: POLISH JUDICIARY BRACES FOR NEEDED REFORM

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SENSITIVE BUT UNCLASSIFIED -- NOT FOR INTERNET DISTRIBUTION

11. (SBU) Summary. Amid growing criticism of Poland's judicial system, Justice Minister Czumka has focused on the inefficiency of the EU's most expensive court system, on a per capita basis. Czumka has also sought to take on the perceived lack of integrity among Polish prosecutors and judges -- though difficult to prove, corruption is believed to be commonplace. In Poland, holdover Communist era practices slow court proceedings and lengthen pre-trial detentions. Inexperienced entry-level judges join a close-knit group that enjoys almost complete immunity, with limited oversight. While no court system has ever been criticized for being too timely or too inexpensive, it is increasingly clear to most Poles that another round of judicial reforms is needed as Poland leaves its communist legal legacy behind. Although some judges claim that Minister Czumka's pledged reforms would encourage executive branch interference, few Poles inside or outside of government would accept the undermining of the independence of the judiciary. End Summary.

Perceptions of Corruption

12. (SBU) An EU-funded Justice Ministry (MoJ) survey released in April showed widespread distrust of the Polish judiciary: 44 percent of those polled held a negative opinion, primarily because of perceived corruption. According to respondents, the most corrupt groups are prosecutors (56 percent), solicitors (54 percent), and judges (50 percent). The other most common criticisms were lack of sufficient personnel, complicated procedures, excessive bureaucracy and delays. A large number also complained of court bias and unfair sentences.

13. (SBU) According to Polish conventional wisdom, a judge's career objective is to become important enough to handle cases that attract larger bribes; however, there is no objective way to confirm such hearsay. According to Grazyna Kopinska, the Director of the Batory Foundation's Anti-Corruption project, the Polish public tends to associate every irregularity or deficiency of the system with corruption. Those who lose court cases often unfairly accuse a judge or lawyer of corruption. Polish Human Rights Ombudsman Janusz Kochanowski insists that corruption is not the judiciary's biggest problem, but did admit that in many cases there may be some doubts about judges' impartiality. (NOTE: Septel will address the issue of corruption in greater depth.)

Wheels of Justice Turn Slowly

¶4. (SBU) Perceptions of judicial corruption and inefficiency are fed by demonstrable delays, including lengthy pre-trial detentions, which are caused by protracted court proceedings.

Many delays stem from the rigid formality and cumbersome procedures left over from the communist period. For example, even when prosecutors have gathered sufficient evidence for a conviction, they often seek to interview any individual with the slimmest connection to a case, and then summon that person as a court witness. As a result, Poland currently places first among countries that have lost cases before the European Court of Human Rights (ECHR) for violating defendants' right to timely trial, although the frequency is in part due to appellants' efforts to find an alternative to what they see as a flawed Polish court system.

Is Funding Really the Problem?

¶5. (SBU) Courts' problems are also blamed on insufficient resources and a lack of judges. Resource and salary issues are the main concern of the Association of Polish Judges (IUSTITIA), a quasi-lobbying group that represents over a quarter of Poland's 10,000 judges. Unlike judges in higher courts, regional judges -- who handle 90 percent of the workload in the Polish court system -- do not have assistants. Regional courts also have the least experienced judges and the fewest resources (in some regional courts, six-to-seven people share one computer). MoJ officials are exploring new information technology solutions to bring greater efficiency to court administration (e.g., digitization and electronic contact between courts/clients).

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However, they acknowledge there is little funding for innovations at a time when Poland is grappling with tax revenue shortfalls and increased budget deficits.

¶6. (SBU) Despite these resource constraints, Poland stacks up well with other countries' judicial funding. According to a 2008 EU Commission study, per capita Poland spends more on courts than any other EU member state and has the most judges. For every 100,000 Poles, there are 26 judges, compared with seven in the UK, 11.9 in France, and 15.7 in Ireland. Polish courts also hire the most support staff -- 83 for every 100,000 citizens, compared with a European average of 56. Judges' salaries are also higher than in most European countries, when compared with the national average salary. Remuneration is higher in countries like the UK and Ireland, but there (like in the U.S.) a judge appointment is the culmination of a legal career, rather than an entry-level option right after law school.

Are Polish Judges Qualified?

¶7. (SBU) As in most civil law systems, new judges in Poland are typically recent law school graduates. The best law school graduates generally choose lucrative corporate positions, leaving judge positions for lower-ranked graduates. Judges are selected through a civil service competition, have a 54 month apprenticeship (increased in March from only 24 months), and are then appointed for life by the President. Deputy Minister of Justice Krzysztof Kwiatkowski has called for a higher minimum age requirement, to be increased from 28 to 30 years of age. The MoJ plans to establish a new training center and curriculum for new judges.

Are Polish Judges too Independent?

¶8. (SBU) In the early years of Poland's post-communist transformation, it was essential to establish a strong and independent judiciary. However, many in Poland now believe

more outside supervision of the judiciary is needed. Poland's 1997 constitution grants judges almost unlimited immunity. Judges may not be arrested or detained unless caught committing a felony. A judge who commits a misdemeanor faces disciplinary proceedings by fellow judges in closed sessions, and may only be removed if it is determined that a serious crime has been committed. Judges' immunity occasionally causes public outcries, e.g., after a disciplinary court refused to lift the immunity of Warsaw District judge who seriously injured another person in a car accident. IUSTITIA representatives acknowledge that courts' internal disciplinary systems lack transparency and credibility, and that judges rarely submit complaints against fellow judges, even when violations are suspected.

Much-Needed Reform, or War on the Courts?

¶9. (SBU) Since his appointment in January (reftel), Justice Minister Czuma has issued statements about the urgent need to fix the judiciary. He has subsequently proposed wide-ranging reforms that give the Ministry new powers to supervise and oversee Polish courts. Czuma also argues that judges and prosecutors' performance should be evaluated, at least in part, on the basis of how quickly and efficiently they try cases. MoJ officials say the reforms will make regional and district courts more flexible, maximize judges' productivity, and facilitate the efficient management of courts. By improving transparency and clarifying criteria for appointments and promotions, the reformers say they will boost the credibility of the judiciary, thereby safeguarding its independence.

¶10. (SBU) For their part, judges complain that the proposed reforms would chip away at judicial independence by giving the Justice Minister too much authority to supervise and audit courts -- tasks now performed by the Supreme Court and the National Judicial Council. Most judges also oppose the MoJ having a say in judge selection. Stanislaw Dabrowski, the head of the National Judicial Council, has accused Czuma of "waging war" on the courts. Czuma attributes the negative reaction to a "small elite who fear changing the status quo." Judge Marek Celej, a director at the National Judicial Council, told the media that judges' criticism of the reform stems mainly from not having been consulted. IUSTITIA has announced plans to propose its own revisions to the MoJ reforms.

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Comment

¶11. (SBU) Widespread distrust of the Polish judiciary reflects increased public intolerance for inefficiencies and injustices of the communist past. Despite the clear need for reform, and tensions between judges and the MoJ that have been a fact of life since 1989, few Poles question the sanctity of judicial independence. While the pace of reform continues to be slow, Poland's judiciary has made strides in improving efficiency, chipping away at case backlogs, and reducing pre-trial detention times.

¶12. (SBU) U.S. Mission Poland cooperates closely with the Polish judiciary on many law enforcement cases with a U.S. nexus, including cases involving U.S. citizens and the prosecution of Polish nationals extradited from the U.S. Improvements in the Polish judiciary benefit U.S. companies that invest in Poland; the cover of the May 2009 issue of American Investor (the American Chamber of Commerce magazine) is titled "In Search of Justice: Poland needs to reform its justice system so it serves the emerging democracy." The USG has also highlighted the need for improved handling of human trafficking and intellectual property rights cases. The Embassy welcomes the visits of American experts who can share their experiences and support the government's serious reform

efforts.
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